

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON FRIDAY THE 16TH DAY
OF DECEMBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),
DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A9/12/2022

FESTUS AMOO - DANIELS

PLAINTIFF

VRS

NAOMI MENSAH

DEFENDANT

PARTIES ARE PRESENT AND SELF REPRESENTED

JUDGMENT

On 9th December 2021, the Plaintiff caused a writ of summons to issue against the Defendant for the following reliefs;

1. An order for the defendant to move out of the house for repair works to be done.
2. Costs.

On 20th January 2022, parties were referred to the Court Connected ADR for a possible settlement of this dispute however settlement failed as a result the suit was set down for determination.

THE CASE OF THE PLAINTIFF

Plaintiff informed the court that he is the bonafide owner of an uncompleted property the subject matter of this dispute situate at McCarthy Hill in Accra.

It is the case of the plaintiff that he employed a caretaker to watch over his property due to the activities of land guards within Accra and its environs. He added that in early 2021, he visited his property and noticed that the caretaker had let out some of the rooms of

the uncompleted property at GHC70.00 per month to tenants without his consent or authority.

According to him, in June 2021, he summoned all the tenants in the house and discussed the need for him to complete all renovation works which were ongoing on the property before renting out same to tenants. He tendered pictorial evidence of constructional works on the property and same were admitted and marked as Exhibit A series.

He informed the court that he informed all illegal tenants that he will give preference to any of them who wanted to rent a room once renovation works were completed but only a few of them opted for this suggestion.

He then gave the tenants three months' notice to quit his property for renovation works to continue with the explanation that on humanitarian grounds, he was ready to refund rent paid to the caretaker by them which he duly paid.

According to him, after two weeks, half of the occupants left the premises voluntarily and others informed him that they were willing to pay rent to him at market prices after the renovation of the property.

Plaintiff stated that he lodged a complaint against five of the occupants at rent control where he was advised to pay compensation to them for the improvements done to the property which compensation was duly paid and all five occupants vacated from the property.

Plaintiff says the defendant refused to quit and as a result he caused his lawyers to write to the defendant and extended her stay for four weeks to enable her vacate the room. He tended in evidence a copy of the said letter and same was admitted and marked as Exhibit B.

He added that after the four weeks grace period, defendant refused to move out and as a result, he was compelled to lodge a complaint at the Rent Control Office. According to him, defendant informed the officers that she will only move out of the premises if she is compelled by the High Court to do so.

Plaintiff says defendant has never paid water bills to him and has instead collected monies from the occupants with the excuse that she was the one who connected water to the property.

Plaintiff concluded by saying that renovation is ongoing at the premises and prays the court to compel defendant to move out of the property and order her to account for monies collected for water from the other tenants.

THE CASE OF THE DEFENDANT

It is the case of the defendant that she rented a room from one Pastor who is also a tenant in the house in the company of one Agyeiwaa who informed her that there were rooms to let in the property the subject matter of this dispute. This was on 17th December 2020.

According to her, she paid the sum of GHC1, 600.00 to the said pastor who in turn called one Amoo, the son of the plaintiff who is the care taker of the premises on phone and communicated to him that defendant had made payment to him. Defendant added that she took the telephone numbers of Amoo and the plaintiff and called them on phone to confirm her payment. She said the pastor directed her to keep her belongings in a room that had a door and move same into the rented room once she completes renovation of same. She added that she fixed windows and door and moved into same to make way for a new tenant to move into the room where she had kept her belongings.

It is her further case that in May 2021, Joe another son of the plaintiff called a meeting and informed them that the land lord wanted to meet all tenants and that was the day

she met the plaintiff personally and got to know that he was the land lord. On the said date, the land lord requested for the number of those who had not paid rent and since then she started cooking for the plaintiff whenever he visited the premises.

She said plaintiff sold a portion of his land and attempted to increase the rent which attempt was resisted by all tenants. She added that Plaintiff brought the police to eject a Nigerian national from the house following which she called her brother in Tema and informed him that the plaintiff was using police assistance to eject tenants from his house. Her brother confirmed to her that it was wrong for him to do so.

According to her, she was invited to the rent control office where she informed the officers that she had paid the sum of GHC1, 600.00 as rent and had fixed a door and a window and bought 5 bags of cement which had been used by the plaintiff.

She called Alex Kweku Boateng as her witness.

DW confirmed that the room was rented out to defendant by one Amoo who is plaintiff's son and caretaker of the property.

It is his case that Amoo directed him to collect the money from defendant and before he did so, he called plaintiff who confirmed that he was aware of the payment made by the defendant and that he should collect same from her and hand it over to Amoo.

He added that Amoo told him the GHC1, 600.00 paid by the defendant was rent for 2 years and that the agreed rent was GHC80.00 per month for two years. According to him, at the Rent Control Office, Amoo confirmed that he had squandered the money paid to him by the defendant and did not hand same over to the plaintiff.

The issues set down for the determination of the court were as follows;

1. Whether or not the Plaintiff is entitled to recover possession of his room from the defendant
2. Whether or not the defendant is entitled to compensation for the alleged improvements made to the premises of Plaintiff.

BURDEN OF PROOF

The law is trite that for a court to decide a case one way or the other, each party to the suit must adduce evidence on the issues to be determined by the court to the standard prescribed by law. This position is supported by various provisions of the Evidence Act, 1975 (NRCD 323).

Section 14 of Act 323 provides as follows;

Except and until it is shifted, a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

The means of effecting proof was explained in **Majolagbe v Larbi [1959] GLR 190**, where Ollenu J. (as he then was) held that:

“Proof, in law is the establishment of fact by proper legal means; in other words, the establishment of an averment by admissible evidence. Where a party makes an averment and his averment is denied, he is unlikely to be held by the court to have sufficiently proved that averment by his merely going into the witness box, and repeating his averment on oath, if he does not adduce that corroborative evidence which (if his averment be true) is certain to exist.”

In civil matters, such as this matter, the requisite standard of proof that must be satisfied is on the preponderance or balance of probabilities. See **Serwah v Kessie [1960] GLR 227**.

The nature of the evidence that may be adduced by a party in support of his claims may be either oral or documentary evidence. However, where there is oral and documentary evidence relating to the same transaction, the rule is that the court should lean favourably towards the documentary evidence, especially where the oral evidence is conflicting, and the documentary evidence is authentic. See **Hayfron v Egyir [1984-86] 1 GLR 682-694**.

Again, where the evidence given by a party in court is in conflict with his previously written statement, the court will attach little weight to the oral testimony and the credibility of the witness will be adversely affected. See **State v Otchere [1963] 2 GLR 463; Akowuah v COP [1963] 2 GLR 390**.

Has the plaintiff been able to discharge this legal burden?

ISSUE ONE

From the evidence, the fact that plaintiff is the owner of the property the subject matter of this dispute is uncontroverted. Again the fact that plaintiff is carrying out renovations in his property is uncontroverted as borne out by Exhibits A series and B being a notice to quit letter served on the defendant and pictorial evidence of ongoing renovation works at the premises. The defendant has not disputed the fact that renovation works is ongoing at the premises which confirms the need for the plaintiff to recover possession of his property unless there are compelling reasons why he should not be so entitled.

ISSUE TWO

I now turn my attention to the counterclaim of the defendant.

With regard to the counterclaim of the defendant, it is trite that the defendant bears the same burden as a plaintiff in proving her counterclaim which is on the preponderance of probabilities as stated by the authorities cited supra.

In *Tetteh Ayaa Iddrisu v. Winfred Otuafo & Anor* [2010] SCGLR 818, the Supreme court held as follows;

“A party who counterclaims bears the burden of proving his counterclaim on the preponderance of probabilities and will not win on that issue only because the original claim failed.”

Ansah JSC in *Joseph Akonu-Baffoe and 2 others v Lawrence Buaku and Another*, Civil Appeal No. J4/6/2012 emphasized the position of the law on counterclaim as follows;

“In essence, a defendant’s counterclaim is to be treated in the same way as the plaintiff’s case. The roles are reversed and the defendant as plaintiff in the counterclaim assumes the burden to prove his case.”

From the evidence, Defendant’s witness, Alex Kweku Boateng established that the sum of GHC1,600.00 was paid to him by the defendant on 17th December 2020. He in turn gave the said sum to one Amoo, the caretaker of the premises who had instructed that the agreed rent was GHC80.00 per month.

The plaintiff denied that such monies were paid to him however defendant failed to lead evidence to show that the said sum had been paid to the said Amoo with the consent or authority of the plaintiff.

Be that as it may, the plaintiff had indicated at paragraph 9 of his particulars of claim and paragraph 3 of Exhibit B that on humanitarian grounds he had decided to pay off all remaining balance of rents paid to the caretaker by the tenants in occupation of his property when he evicts them from his property. I find that the balance if any of defendant’s rent paid to the caretaker will not be an exception.

Having said that, I find from the evidence given by the defendant’s own witness that defendant paid the sum of GHC1, 600.00 at the rent of GHC80.00 per month and moved

into plaintiff's property on 17th December 2020. Going by the evidence, Defendant was to stay in plaintiff's property for 20 months commencing from 17th December 2020.

Calculating from 17th December 2020 to today 16th December 2022, defendant has been in occupation of the said property for 24 months having lived rent free in the property for four months.

Defendant also claimed that she paid for the connection of water supply to the plaintiff's property and that she also fixed a door and window to the room she occupies and bought 15 bags of cement which has been used by the plaintiff. These claims were forcefully denied by the plaintiff.

In the case of *Zabrama v. Segbedzi* [1991] 2 GLR 221 at 224, the Court of Appeal held as follows;

A person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment is true and he does not discharge this burden unless he leads admissible and credible evidence from which the facts or facts he asserts can be properly and safely inferred."

From the law cited supra, I find that the defendant has not been able to prove her claim with respect to fixing of door and windows as well as connection of water supply to plaintiff's property as she did not tender any evidence by way of receipts to prove her claim.

Accordingly her claim with respect to the fixing of door, windows, purchase of 15 bags of cement and payment of water supply fails and same is dismissed.

From the totality of the evidence, I find that the plaintiff has been able to prove his claim on the preponderance of the probabilities and is therefore entitled to recover his room

from the defendant for renovation works to be completed pursuant to section 17(i) (ii) of the Rent Act 1963 (Act 220)

And having considered that Exhibit B dated 2nd November 2021 has long been served on the defendant and having found that the defendant has been living rent free for four months in plaintiff's property, I find that reasonable notice has been served on the defendant to vacate from plaintiff's premises.

Accordingly, defendant is ordered to vacate from the premises the subject matter of this dispute and yield up vacant possession to the plaintiff on or before 31st December 2022.

Defendant is ordered to pay rent for four months at GHC80.00 per month to the plaintiff before vacating from the premises. Defendant is again ordered to pay all utility bills outstanding on or before 31st December 2022 to the plaintiff.

Costs of GHC2, 000.00 is awarded in favour of the plaintiff against the defendant.

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**H/W RUBY NTIRI OPOKU (MRS.)
(DISTRICT MAGISTRATE)**